IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16820 of 2022

==

Jagarnath Sharma son of Late Chandra Deep Mistry resident of Ward No. 27, Dehri, Police Station- Dehri,-on-Sone, District- Rohtas.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner of State Tax, Bihar having its office at Vikas Bhawan, Bailey Road, Patna.
2. The Assistant Commissioner of State Tax, Aurangabad Circle, Aurangabad.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Ajay Kr. Rastogi, Sr. Advocate Mr. Parijat Saurav, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 24-04-2023

1. On 26.10.2022, the petitioner's vehicle was intercepted on 06:15 AM and detained for not having a valid e-way bill (EWB).

2. Learned senior counsel for the petitioner submits that the e-way bill was valid till 11:59 PM on 25.10.2022. 6 hours and 16 minutes thereafter, the truck has been intercepted. Referring to the third proviso to Rule 138(10) of the Central Goods and Services Tax Rules (hereinafter referred to as "Rules"), he submits that the option of extending the e-way bill was available within 8 hours from the time of its expiry. The petitioner, therefore, had time till about 08:00 AM on 26.10.2022 for renewal of the e-way bill. The detention, therefore, on the

ground that the goods were in movement with an expired e-way bill is unsustainable.

3. Another submission made on behalf of the petitioner by the learned senior counsel is that the detaining officer has passed order under Section 129(3) of the Central Goods and Services Tax Act (hereinafter referred to as "Act") on 02.11.2022, simultaneous to issuance of notice under Section 129(1)(a) of the Act.

4. The petitioner was allowed time till 09.01.2022 at 11:30 AM by the notice under Section 129(1)(a) for furnishing a reply and availing the opportunity of personal hearing, as per statutory mandate. On the same date the order has been passed under Section 129(3). He, therefore, has actually not been allowed any opportunity whatsoever.

5. Learned counsel for the State on the other hand submits that the provision enabling extension of e-way bill within 8 hours, is to enable the person-in-charge of the goods in movement to get the e-way bill extended, but only under *bona fide* circumstances. It does not mean that without taking any steps for renewal of the e-way bill, the person-in-charge of the goods can continue to move the goods after the expiry of the e-way bill, without extending the e-way bill in accordance with the Rule.

Insofar as simultaneous issuance of notice as well as order of penalty on 02.11.2022, reliance is sought to be placed on copy of an order sheet filed with supplementary counter-affidavit on behalf of Respondent No. 2 (Annexure-E). It is submitted that from the same it is apparent that the Joint Commissioner of State Tax, Aurangabad Circle, Aurangabad, has passed the order against the petitioner while he was present in the proceedings on 02.11.2022. The order dated 02.11.2022 recorded in the order sheet manifests substantial compliance with the statutory provisions of principles of natural justice, as contemplated under Section 129. The resultant penalty, therefore, does not require any interference.

6. This Court has gone through the notice under Section 129(1)(a) as well as the order imposing penalty on the same date i.e. 02.11.2022, contained in Annexure-5, both these orders have been issued by the proper officer simultaneously. It is *ex facie* evident that the notice and order have been recorded simultaneously by the same authority. The order imposing penalty does not record the fact of the petitioner's appearance or hearing prior to passing of the order.

7. The order dated 02.11.2022, passed by the Joint Commissioner of State Tax, Aurangabad Circle, Aurangabad,

order sheet of which has been relied upon by the learned counsel for the State. The order dated 02.11.2022 reads as follows:-

> "श्री अरविन्द कुमार शर्मा उपस्थित। बिहार माल एवं सेवा कर अधिनियम 2017 की धारा 129 (1) (a) के तहत शास्ति की गणना कर MOV 07 में सुचना निर्गत की। एक प्रति श्री अरविन्द कुमार शर्मा को हस्तगत। श्री अरविन्द कुमार शर्मा द्वारा पुनः आग्रह किया गया की वे शास्ति की एकम का भुगतान कर वाहन विमुक्त करवाना चाहते है। तत्पश्चात बिहार माल एवं सेवा कर अधिनियम 2017 की धारा 129 (3) के तहत प्रपत्र GST MOV 09 में Order of demand of Penalty पारित किया गया। एवं प्रति श्री अरविन्द कुमार शर्मा को हस्तगत। अंत form अभिलेख पर संलग्न है। "
>
> Translation in English:-
>
> "Shri Arvind Kumar Sharma present. Under Section 129 (1) (a) of the Bihar Goods and Services Tax Act, 2017, notice was issued in MOV 07 after calculating the penalty. One copy handed over to Shri Arvind Kumar Sharma. Mr. Arvind Kumar Sharma urged again that he wants to get the vehicle freed after paying the penalty amount. Thereafter, an Order of demand of Penalty was passed in Form GST MOV 09 under Section 129(3) of the Bihar Goods and Services Tax Act, 2017. And copy handed over to Mr. Arvind Kumar Sharma. The end form is attached on record."

8. Learned senior counsel for the petitioner disputes and denies the veracity of this order sheet by submitting that petitioner's alleged appearance is not endorsed or acknowledged by any initial of the petitioner on the order sheet.

9. From the same, it is evident that copy of notice under Section 129(1)(a) is said to have been handed over to the petitioner's representative whereafter the order determining penalty has been issued under Section 129(3) and handed over to the petitioner. It is clear that the notice under Section 129(1)(a) was nothing more than an empty formality. After issuance of the same, no time/opportunity whatsoever has been granted and immediately the order under Section 129(3) has been passed, containing the penal consequence.

10. This Court would find that from the notice issued under Section 129(1)(a), order of determination of penalty under Section 129(3) read with the order sheet dated 02.11.2022, does not support the contention of the learned counsel for the State that any opportunity of filing a response or hearing was afforded to the petitioner. The show cause and order determining the penalty have been recorded simultaneously on the same date. The determination of penalty under Section 129(3) is, therefore, in contravention of the statutory requirement under Section 129 of the Act. The requisite compliance with principles of natural justice, inherent in Section 129(4) has thus been violated.

11. We, therefore, are in agreement that the order imposing penalty is unsustainable and is hereby quashed. The

matter is remanded to the Joint Commissioner of State Tax, Aurangabad Circle, Aurangabad.

12. Learned senior counsel for the petitioner submits that the petitioner would present himself before the authority on 05.05.2023, along with his response to the show cause issued under Section 129(1)(a).

13. The petitioner's response to the show cause is required to be considered after due opportunity of hearing, in accordance with the statutory provisions, which the Joint Commissioner of State Tax, Aurangabad Circle, Aurangabad, must comply.

14. Writ petition is allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	**AFR**
CAV DATE	**NA**
Uploading Date	**01.05.2023**
Transmission Date	**NA**